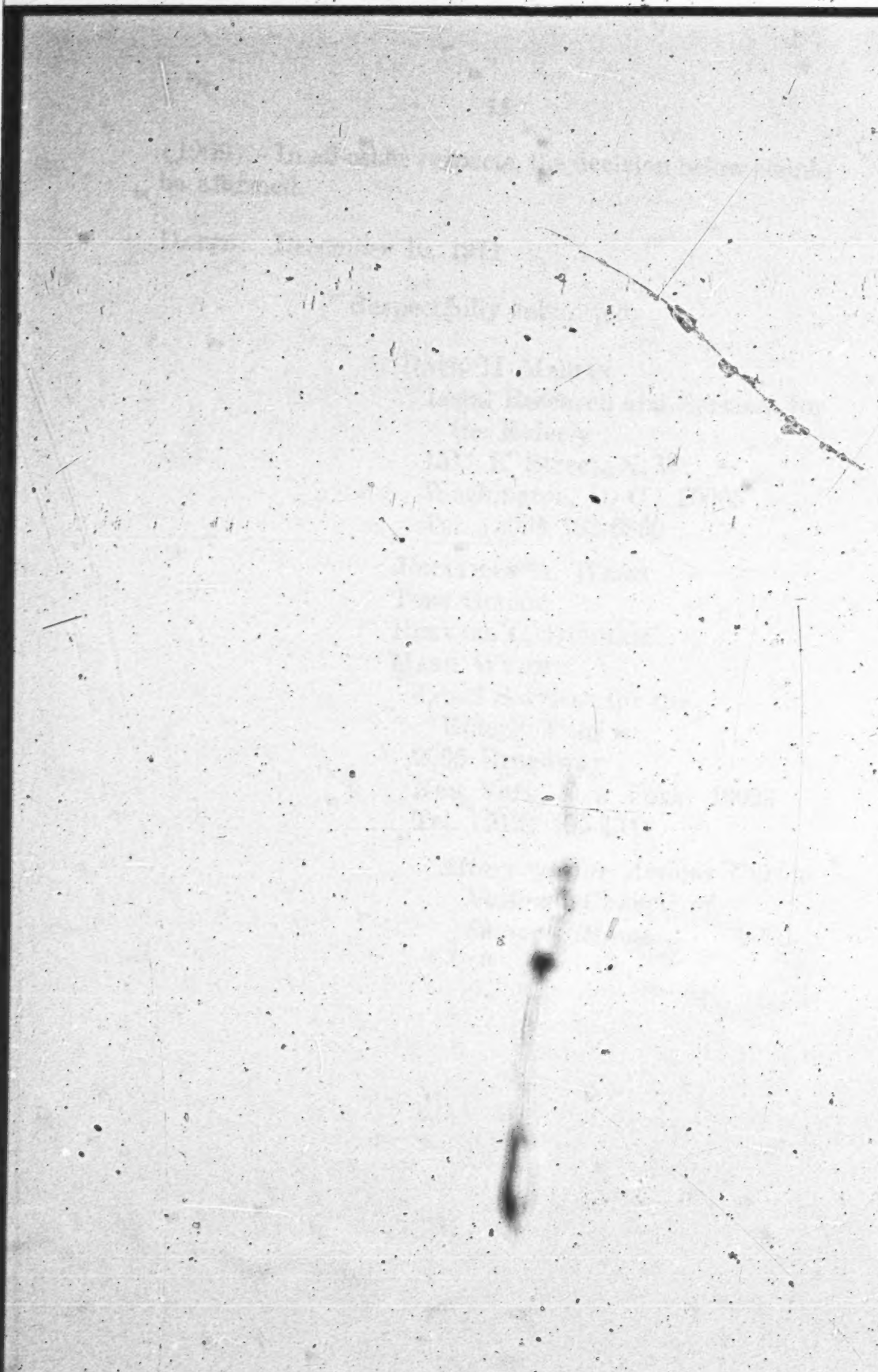

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IN THE

Supreme Court of the United States

October Term, 1971.

No. ~~71—1182.~~

RADIE P. WRIGHT, *et al.*,
Appellants,

vs.

ELLIOT RICHARDSON, Secretary of Health, Education and Welfare,
Appellee.

No. 70—161.

ELLIOT RICHARDSON, Secretary of Health, Education and Welfare,
Appellant,

vs.

RADIE P. WRIGHT, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

Brief *Amicus Curiae* on Behalf of Luella H. Mills, and all other persons similarly situated.

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Table of Contents.

	Page
Interest of *Amicus Curiae*	1
Summary of Argument	3
ARGUMENT:	
I. Old age, survivors, and disability benefits are property interests and their deprivation must accord with the requirements of procedural due process of law	4
II. In that the interests of recipients of Title II benefits are fundamental, due process requires that termination or suspension, on whatever grounds, be preceded by a judicially styled hearing	7
Conclusion	10

TABLE OF AUTHORITIES.

Cases:	Page
Bell v. Burson, 402 U. S. 535 (1971)	5
Cafeteria and Restaurant Workers Union, etc., v. McElroy, 367 U. S. 886 (1961)	8
California Dept. of Human Resources v. Java, *et al.*, 402 U. S. 121 (1970)	5, 9
Escalera v. New York City Housing Authority, 425 F. 2d 853 (2d Cir. 1970), cert. denied, 400 U. S. 853 (1971)	5
Ex parte Robinson, 86 U. S. 505 (1873)	6
Garfield v. Goldsby, 211 U. S. 249 (1908)	6
Goldberg v. Kelly, 397 U. S. 254 (1970)	4, 5, 10
Goldsmith v. Board of Tax Appeals, 270 U. S. 117 (1925)	9
Hannah v. Larche, 363 U. S. 420 (1960)	7, 8
Helvering v. Davis, 301 U. S. 619 (1936)	6
Mills, *et al.*, v. Richardson, 71 Civ. 208 (N.D. N.Y. 1971)	1, 2
Philadelphia Co. v. S. E. C., 175 F. 2d 808 (D.C. Cir. 1948)	7
Sherbert v. Verner, 374 U. S. 398 (1963)	5
Slochower v. Board of Higher Education, 350 U. S. 551 (1956)	5

Page

Sniadach v. Family Finance Corp., 395 U. S. 337 (1969) 5, 9

Southern Railway Co. v. Virginia, 290 U. S. 190 (1933) 7

Speiser v. Randall, 357 U. S. 513 (1958) 5

Willner v. Committee on Character and Fitness, 373 U. S. 96 (1963) 9

Wisconsin v. Constantineau, 400 U. S. 433 (1971) 5, 10

CONSTITUTIONAL PROVISION.

United States Constitution, Amendment V 2, 3, 4, 7

STATUTES.

Social Security Act, §201, 42 United States Code, §401 (1935) 2

Social Security Act, §204, 42 United States Code, §404 (1935) 2

IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-1152.

RADIE P. WRIGHT, *et al.*,

Appellants,

vs.

ELLIOTT RICHARDSON, Secretary of Health, Education and Welfare,

Appellee.

No. 70-161.

ELLIOTT RICHARDSON, Secretary of Health, Education and Welfare,

Appellant,

vs.

RADIE P. WRIGHT, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

Brief *Amicus Curiae* on Behalf of Luella H. Mills, and all other persons similarly situated.

Interest of *Amicus Curiae.*

In April, 1971, Cornell Legal Aid filed the case of *Mills, et al., v. Richardson* (71 Civ. 208), as a class action in the United States District Court for the Northern

District of New York seeking to restrain the enforcement, operation and execution of Section 204 of the Social Security Act, 42 U. S. C. §404 on the ground of its repugnance to the Due Process Clause of the Fifth Amendment to the Constitution. This section authorizes the suspension of future Old Age, Survivors and Disability Insurance (hereinafter "OASDI") benefits provided for in Title II of the Social Security Act, 42 U. S. C. §401 *et seq.*, to recoup overpayments, although where the recipient is without fault, and recovery would defeat the purposes of the Act or be against equity and good conscience, recovery shall be waived.

The *Mills* case and *Wright v. Richardson* both raise fundamental questions of procedural due process relating to the suspension *(Mills)* or termination *(Wright)* of Social Security payments. Although different provisions of the Social Security Act are called into question by the two cases, a decision as to the requirements of due process on termination of disability benefits will control the outcome of the *Mills'* litigation.

The interest of amicus is best exemplified by a brief recital of the compelling and undisputed circumstances involved in the *Mills* case. Since 1964, a sixty-year-old widow (Luella Mills), nearly blind and partially crippled, had been receiving disability benefits for herself and survivor's insurance for both herself and her daughter, Gloria. These Social Security payments, amounting to one hundred and twenty-nine dollars per month, were the Mills' only means of subsistence.

In 1969, Gloria became ineligible to receive survivor's benefits. Mrs. Mills was not made aware of this fact, and due to the admitted error of the Social Security Administration's New York Payment Center, continued to receive her regular monthly checks. Almost two years later, on February 11, 1971, Mrs. Mills was notified by

mail that an overpayment had occurred and that all of her benefits were suspended until April, 1973, for the purpose of recoupment. No mention was made in this form letter of the requisite determination as to "fault," "the purposes of the Act," or "equity and good conscience," nor of any grounds on which such findings might have been based. Thus, in a most impersonal way, with wholly insufficient notice, the Social Security Administration deprived Mrs. Mills of the very means by which she lived, without so much as affording her the opportunity to contest the findings on which that deprivation must rest.

Whether Title II benefits are terminated on the ground of ineligibility or suspended on the ground of overpayment, bears little relevance to the caliber of the injury sustained or the necessity for due process safeguards. It is the position of amicus that cessation on either ground in the absence of adequate notice and a judicially-styled hearing is a deprivation of property without due process of law.

Summary of Argument.

All categories of benefits provided for in Title II of the Social Security Act are "property" within the context of the Fifth Amendment, and their deprivation must therefore comply with the requirements of procedural due process. The nature of the issues to be resolved, and the fundamental character of the interests involved, demand the protections of a judicially styled hearing. The specific grounds upon which the cessation of benefits is based does not alter the necessity for an adjudicatory proceeding.

ARGUMENT.

I.

Old age, survivors, and disability benefits are property interests and their deprivation must accord with the requirements of procedural due process of law.

The Court should squarely hold that once eligibility has been initially determined, all forms of Title II benefits are "property" as that term has come to be understood in the context of the Fifth Amendment, and may not be terminated or suspended without adequate notice and hearing. Indeed, such a holding is compelled by the recent decisions of this Court. In the case of *Goldberg v. Kelly*, 397 U. S. 254, 262 (1970), dealing with public assistance under Title IV of the Act, Justice Brennen, writing for the majority, noted that:

> "It may be realistic today to regard welfare entitlements as more like 'property' than as a gratuity. Much of the existing wealth in this country takes the form of rights which do not fall within traditional common law concepts of property. It has been aptly noted that 'Society today is built around entitlement . . . . Many of the most important of these entitlements now flow from government: subsidies to farmers and businessmen, routes for airlines and channels for television stations; long term contracts for defense, space and education; *Social Security Pensions for individuals.*" (Italics supplied.) *Goldberg v. Kelly*, 397 U. S. 254, 262 (1970) n. 8, citing Reich, Individual Rights and Social Welfare: The Emerging Legal Issues, 74 Yale L. J. 1245, 1255 (1965). See, also, Reich, The New Property, 73 Yale L. J. 733 (1964).

Thus, in *Goldberg*, welfare benefits were recognized as a matter of statutory entitlement for persons qualified

to receive them, and procedural due process was held applicable to their termination.

Goldberg, although highly significant, is but one example of the line of cases holding that relevant constitutional restraints apply to the deprivation of many forms of property interests. Such deprivations now include the impairment of reputation by public notice, *Wisconsin v. Constantineau,* 400 U. S. 433 (1971); garnishment of wages, *Sniadach v. Family Finance Corp.,* 395 U. S. 337 (1969); disqualification for unemployment compensation, *Sherbert v. Verner,* 374 U. S. 398 (1963). Cf. *California Dept. of Human Resources v. Java, et al.,* 402 U. S. 121 (1970); denial of a tax exemption, *Speiser v. Randall,* 357 U. S. 513 (1958); discharge from public employment, *Slochower v. Board of Higher Education,* 350 U. S. 551 (1956); and termination of tenancy in public housing, *Escalera v. New York City Housing Authority,* 425 F. 2d 853 (2nd Cir. 1970), cert. denied 400 U. S. 853 (1971).

The Court's most recent recognition of the broad scope of due process protection is found in *Bell v. Burson,* 402 U. S. 535 (1971), which held that the suspension of a driver's license involves a sufficiently important interest to require notice and a prior hearing. The Court there stated:

> This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege." (Citing cases.) * * * it is fundamental that except in emergency situations, due process requires that when a State seeks to terminate an interest such as that here involved, it must afford "notice and opportunity for hearing appropriate to the nature of the case *before* the termination becomes effective" (court's italics) (citing cases).

The principle that there must be notice and hearing prior to governmental action adversely affecting important interests to which one has been previously found legally entitled is simply a reassertion of a constitutional requirement settled by this Court more than sixty years ago. In *Garfield v. Goldsby*, 211 U. S. 249, 262 (1908), a unanimous Court stated there is

> "no place in our constitutional system for the exercise of arbitrary power. • • • The right to be heard before property is taken or rights or privileges withdrawn, which have been previously legally awarded, is the essence of due process of law. It is unnecessary to recite the decisions in which this principle has been repeatedly recognized. It is enough to say that its binding obligation has never been questioned in this court. *Accord, Ex parte Robinson*, 86 U. S. 505, 513 (1873): 'The principle that there must be citation before hearing, and hearing or opportunity of being heard before judgment, is essential to the security of all private rights. Without its observance no one would be safe from oppression wherever power may be lodged.'"

In view of these decisive precedents, it is inconceivable that Social Security benefits can be terminated or suspended without prior proceedings in which the recipient may participate. There is simply no justification for denying this protection to the recipients of all categories of Title II benefits who have spent their productive years contributing to the Social Security Payroll Tax with the expectation that when the time came they could rely on the receipt of those benefits to shield them "from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near." *Helvering v. Davis*, 301 U. S. 619, 641 (1936).

II.

In that the interests of recipients of Title II benefits are fundamental, due process requires that termination or suspension, on whatever grounds, be preceded by a judicially styled hearing.

A principle issue before this Court is the content of the due process protection to be afforded a recipient of Disability Insurance before benefits may be terminated on eligibility grounds. It has been persuasively argued that given the complex nature of disability determinations, only an adjudicative process can satisfy the requirements of the Fifth Amendment. Amicus fully agrees with this position, and believes it is supported by the inescapable reading of numerous decisions of this Court. Where "governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated wth the judicial process." *Hannah v. Larche*, 363 U. S. 420, 442 (1960); *Southern Railway Co. v. Virginia*, 290 U. S. 190, 199 (1933); *Philadelphia Co. v. S. E. C.*, 175 F. 2d 808, 817 (D. C. Cir. 1948). In the *Philadelphia Co.* case, the Court provided a concise summary of the protective norms which are constitutionally required herein (175 F. 2d at 817):

> "It is elementary also in our system of law that adjudicatory action cannot be validly taken by any tribunal, whether judicial or administrative, except upon a hearing wherein each party shall have opportunity to know the claims of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence in his own behalf, and to make argument. This is a requirement of the due process clause of the Fifth Amendment of the Constitution."

Similar protections must be afforded to *all* withdrawals of Title II benefits and amicus urges the Court not to limit its holding so as to require judicially styled hearings only in disability determinations. That narrow holding would create an artificial and arbitrary distinction between terminations based on eligibility and suspensions based on overpayments. The policies which underlie the necessity of a judicially styled hearing in disability cases apply with equal if not greater force to cases in which benefits are suspended to recoup alleged overpayment. The conclusion compelled by the facts herein is that no benefits under Title II of the Social Security Act may be deprived without a judicially styled hearing in compliance with procedural due process.

As the Court said in *Cafeteria and Restaurant Workers Union, etc., v. McElroy,* 367 U. S. 886, 895 (1961), "consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action." See also *Hannah v. Larche,* 363 U. S. 420, 440 (1960). In determining the contents of due process, the nature of the issues to be determined, the remoteness or immediacy of the citizen's interest, its quality and quantity, are all elements which are properly accounted in striking a balance between economy and convenience to the state, on one hand, and the injury, inconvenience and debasement of the individual citizen on the other.

In striking such a balance, it is important to note that the controverted issues which will arise in a recoupment case are of the kind traditionally subject to the judicial process. Questions of fault, the policies of the Social Security Act, and equity and good conscience may each be relevant in a decision to recoup an overpayment. Thus, administrative action in suspending benefits for recoup-

ment is plainly adjudicatory, involving issues not only of statutory construction and fundamental fairness, but also assessments as to the honesty and credibility of individual recipients, a determination on which this Court has particularly stressed the right to be heard. *Goldsmith v. Board of Tax Appeals*, 270 U. S. 117 (1925); *Willner v. Committee on Character and Fitness*, 373 U. S. 96 (1963).

The property interest of the recipent in Social Security benefits is substantial. Attempts by the government to distinguish the importance of OASDI benefits from other interests protected by the requirements of notice and hearing are unavailing. Mr. Justice Douglas, concurring in *California Department of Human Resources v. Java, et al.*, 402 U. S. 121, 135 (1970), rejected as "surprisingly disingenuous" a similar attempt to distinguish welfare and unemployment benefits on the ground that one is based on need while the other is not. The argument that a recipient of Social Security benefits is not *per se* impoverished and hence not faced with "brutal need" is flatly incorrect in many factual situations (e. g., Mrs. Mill), and, in any event, totally overlooks the clear holding of *Sniadach v. Family Finance Corp.*, 395 U. S. 337 (1969). It was there recognized that wages could not be garnisheed in the absence of a prior adjudication. As a general proposition wage earners are certainly no more destitute than widows, orphans, or the disabled.

Another significant aspect of the recipient's interest to be weighed in this due process balance is the potential debasement of human dignity often suffered when OASDI benefits are withdrawn. Such action may well result in a loss of both pride and self-esteem for persons who have worked and provided for their own needs throughout their lives. When eligible recipients of Social Security are denied those benefits in a summary manner, and often forced onto the welfare rolls, they face the degrad-

ing prospects of having their homes encumbered, their relatives compelled to provide support, and their tranquility disrupted. As the Court stated in *Wisconsin v. Constantineau*, 400 U. S. 433, 437 (1971), "where a person's good name, reputation, honor, or integrity is at stake, because of what the government is doing to him, notice and an opportunity to be heard are essential."

There are no interests at stake in the Social Security context which were not at stake in *Goldberg*, where the Court stated: "While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process. • • • [T]he interest of the eligible recipient in uninterrupted receipt of public assistance, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens."

Conclusion.

For the foregoing reasons, amicus urges this Court to hold that no benefits under Title II of the Social Security Act may, regardless of grounds, be deprived without adequate notice and a judicially styled hearing in compliance with procedural due process.

Respectfully submitted,

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